

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Roger and Darlene Boen
DOCKET NO.: 05-00039.001-R-1
PARCEL NO.: 23-29-302-013-0040

The parties of record before the Property Tax Appeal Board are Roger and Darlene Boen, the appellants, by attorney Mark Goodwin of Dukes, Ryan, Meyer, Freed & Goodwin, Ltd., Danville, Illinois; and the Vermilion County Board of Review, by State's Attorney Appellate Prosecutor, David O. Edwards of Giffin, Winning, Cohen & Bodewes, P.C., Springfield, Illinois.

The subject property consists of a 2003 double wide mobile home containing 2,052 square feet of living area that is located in Danville, Illinois. The subject is also improved with a porch and driveway.

The appellant, Roger Boen, appeared before the Property Tax Appeal Board with legal counsel contending the subject dwelling was improperly classified and assessed as real estate. Mr. Boen is the elected Supervisor for Danville Township. In support of this argument, the appellant submitted a litany of documents and photographs outlining the appellants' position regarding the subject correct classification and assessment. The appellants also called two witnesses in support of the appeal.

The first witness called by the appellants was Tim Bowers. Bowers is the owner of Premiere Homes, a factory built housing company based in Farmersburg, Indiana. The witness testified his company markets and sells manufactured or "HUD" (Federal Housing and Urban Development) homes as well as modular homes. He described a "manufactured home" as a dwelling built to "HUD" code. Compared to a "stick built" home, Bowers testified a manufactured home or a "HUD" home is built to national standards set by the federal government whereas stick built or modular homes are built to state or local jurisdictional codes depending on location. Manufactured homes sold by Premiere Homes are built "offsite" and brought to their intended location by truck in two

(Continued on Next Page)

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Vermilion County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$	398
IMPR.:	\$	0
TOTAL:	\$	398

Subject only to the State multiplier as applicable.

or three sections on their own wheels. The sections are then assembled for use as a dwelling.

With respect to the subject dwelling, the witness testified the appellants purchased a "Four Seasons" model manufactured dwelling in 2003. The appellants received a certificate of title as the conveyance of ownership. The witness explained the site for the subject dwelling was prepared for delivery, including staking out the four corners where the dwelling is to be placed. The area for the foundation was excavated and "cross runners" supported by footings were set in place. After delivery, the sections of the home are placed together on a "pier set" foundation; the utilities are hooked up; a "curtain wall" is built; the backfill is completed; gutters are installed; and the central air conditioning installation is completed.

The witness further described the subject's foundation as a "pier set" foundation. He explained this type of foundation is built by placing footings below grade, set with plastic pea gravel. The home is then brought to the foundation site on wheels and is suspended by its wheels. The runner gear and hitches are then removed from the home. The subject dwelling was then set down and rests on approximately 40 piers, as specified by the manufacturer. Bowers testified the piers bear the weight of the dwelling. He testified the subject's pier foundation consist of unattached, stacked concrete blocks with two inch hard wood blocks for leveling purposes. The piers are not mortared or bolted to the home. After the home is set onto the foundation, the exterior concrete block "curtain wall" is built-up to just below the siding of the dwelling. Bowers testified this wall plays no substantive weight bearing role in supporting the home, however, the "curtain wall" is connected to the footings. The tongue of the dwelling was used for towing. The witness testified there is a red tag "with HUD numbers" on the outside of each section identifying the manufactured home.

The witness next described the manner in which the subject dwelling could be moved to another property. The witness also testified his business takes "trade-ins" on older manufactured homes and sells new ones.

Under cross-examination, Bowers testified the red sticker or tag on the outside of the subject references the manufactured dwelling is HUD regulated and built according to national HUD standards. Modular homes have a yellow tag. Bowers next provided testimony regarding the differences between a manufactured home versus a modular home. He explained modular homes are regulated by state and local governments whereas manufactured homes are regulated by the federal government through HUD. In addition, he explained that typically, but not always, a modular home is supported by the mainline of the home

in addition to a perimeter weight bearing foundation. He testified a manufactured home could be set and rest on a perimeter foundation. However, Bowers explained a perimeter foundation may not necessarily be permitted or regulated by HUD and the designs of manufactured homes are not required to have perimeter support. The subject home was set up to the manufacturer specifications. Bowers further explained that the subject dwelling could not be supported by a perimeter foundation without the use of piers.

Bowers opined manufactured homes could last as long as a conventional home with proper maintenance, including the pier foundation. He also acknowledged some risk of damage involved in moving a home, just like moving a conventional home. However, he noted a manufactured home is designed to be moved. He did not think an individual homeowner would have the equipment and training to move any type of dwelling.

The appellants next called Delores Roberts as a witness. Roberts is a former Deputy Assessor for Danville Township, Vermilion County, Illinois. Roberts retired after 29 years of service with Danville Township. Her last supervisor was William Kizer, Assessor for Danville Township. Some of her duties included assessing property for real estate taxation. With respect to assessing mobile homes, the former deputy assessor testified she was directed by former and current township assessors to assess homes with foundations as real estate while homes with skirting, "like properties in mobile home parks that could move whenever" be placed on the privilege tax. She indicated this was Danville Township's general policy for assessing mobile homes. When questioned regarding whether a pier foundation was considered when classifying a particular property as real estate or a mobile home, Roberts testified "we did not go into that."

Roberts also testified she inspected the subject property after it was completed in 2003 without the homeowner's permission. She determined the subject property has a concrete block foundation. She did not know if block perimeter was attached to the home. She did not believe the subject has since been inspected by any other county assessment official. Within Danville Township, the former assessor was aware of two other properties similar to the subject that are taxed under the privilege tax. She testified that according to the township assessor, William Kizer, these properties do not have attached perimeter foundations.

The appellant, Roger Boen, next provided testimony to support the claim the subject dwelling should be classified as a mobile home and taxed under the privilege tax. The appellant testified he witnessed the subject dwelling being delivered to its site in two sections through the use of a truck. He viewed the work crew set up and place the dwelling on 38 piers. The appellant agreed the

piers are supported by concrete runners which are supported by concrete footings situated below grade. The appellant acknowledged the dwelling has a perimeter mortared concrete block wall formation that is constructed on top of footings situated below the frost line. However, the appellant testified the dwelling is not supported by the perimeter formation and there is a gap between the dwelling and the perimeter formation. Boen added the concrete or "curtain wall" was not installed for almost one week after the home had been placed on the pier foundation. All of the utilities were hooked-up and functioning during this one week period in order for he and his wife to reside on the premises.

The appellant testified he received a certificate of title conveying ownership of the home from the seller and was required to transfer to a vehicle title through the Illinois Secretary of State. The appellant also testified he may live in the home for the next forty years. He may leave the home at its present location, but may buy a larger manufactured home to replace the current "Four Seasons" model. The appellant also indicated for assessment and real estate tax purposes, the mobile home is situated on one parcel and the garage is situated on an adjoining parcel.

Through the last few years Mr. Boen has investigated the practice and policy applied by the township assessor regarding the classification and assessment of mobile homes. Although he is not an assessor, Boen testified he has gained much knowledge regarding the assessment field through Township Officials of Illinois Conference. He found that in Danville Township no property receives a mobile home classification unless it has skirting and is located in a mobile home park, although numerous similar types of properties located throughout Danville Township are set-up in the same manner, that being placed on pier foundations.

Under cross-examination, Boen agreed the wheels and tongue were removed after the dwelling was set up on the pier foundation. These items were merely used for transportation purposes. The appellant agreed he does not own the wheels and tongue as stated in the purchase contract. He testified these items would be brought back if the subject property was traded for a new home. The appellant does not have any immediate plans to move the dwelling. The appellant agreed the subject dwelling is being treated consistently with respect to the practice and policy of classifying manufactured homes within Danville Township. Boen is not the township assessor's boss or supervisor, but has some oversight with respect to the Danville Township Assessor's budget.

There was an abundance of documentary evidence submitted by the appellants in support of the appeal. Little to any testimony was provided with respect to this evidence. This evidence is comprised of a prospective appraisal of the subject dwelling prepared by the Vermilion County Supervisor of Assessments, Donald R. Crist; documentation indicting the subject dwelling is insured as a mobile home; and photographs showing the undercarriage of the subject dwelling and "curtain wall." The photographs show workers installing the concrete block "curtain wall" after the dwelling was set in place, but the perimeter concrete block formation does not appear to support the dwelling. The photographic evidence also depicts the subject dwelling is supported and rests on un-mortared concrete blocks that are stacked upon a concrete slab under the home's steel frame. On top of the concrete blocks are wooden shims used to level the home. The appellants also submitted a copy of the Mobile Home Local Services Tax Act. (35 ILCS 515).

The appellant also submitted a synopsis of the Property Tax Appeal Board's decision under Docket Number 00-02122.001-R-1 that was published by Township Prospective, July/August 2005, pages 31 and 32. In that decision, the Property Tax Appeal Board found the subject dwelling under appeal was a mobile home subject to the privilege tax based on its temporary pier foundation. Other ancillary issues involved in that appeal included the violation of local zoning ordinances; mobile homes prior to 1979 that were classified as real property and such statutory classifications must remain frozen; and the board of review's standing policy that everyone who owns their own mobile home and land, regardless of foundation type, will be classified as real estate.

Finally, the appellant submitted a property record card for a property owned by Greg Cokrell located in Danville Township. The 768 square foot dwelling was classified and taxed as a mobile home. This property is also improved with a 768 square foot garage that is assessed as real property. The appellant argued the foundation of this dwelling is exactly like the subject. The appellant argued the physical characteristics of the subject property makes it a mobile home and it should be taxed under the privilege tax. Based on this evidence the appellants argued the subject dwelling should not be classified and assessed as real estate.

The board of review presented its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$21,392 was disclosed. In support of the subject's assessment, the board of review submitted a letter outlining its position regarding the appeal, four exterior photographs of the subject dwelling, and a copy of the construction mortgage taken out by the appellants in June 2003 for \$75,000. The board of review contends if someone is pulling a home, they do not need a construction loan. The

front page of the mortgage states the mortgage is for real property, which includes all improvements. The board of review contends the local bank would not have loaned \$75,000 for the lot alone. The board of review contends the local bank is not in the business of lending money for mobile homes. Furthermore, the board of review claims there is no doubt the local bank would not offer a market rate for a residential real estate mortgage on a mobile home that is considered personal property.

The board of review further claims the factual information regarding the subject dwelling is:

1. A permanent dwelling on an occupied site.
2. The dwelling does not have hitches, wheels, and axils
3. The dwelling sits on a closed perimeter foundation made of concrete blocks.
4. The subject property is in exact conformance with the Illinois Manufactured Housing and Mobile Home Safety Act. (430 ILCS 115/2(1)).

The board of review also submitted several publications regarding foundations for manufactured housing. The construction standards for manufactured homes in a 46 page publication by the United States Department of Housing and Urban Development, A Review of Manufactured Housing Installation Standards and Instructions; Regulation of Factory Built Structures in Illinois, published by the Illinois Department of Public Health; Guide to Foundation and Support Systems for Manufactured Homes, published by the Manufactured Housing Research Alliance; Permanent Foundations Guide for Manufactured Housing, prepared for the United States Department of Housing and Urban Development by the School of Architecture/Building Research Counsel, University of Illinois at Urbana-Champaign; and Understanding Today's Manufactured Housing, by the Manufactured Housing Institute. The board of review argued the definition of a permanent foundation as detailed in these publications include pier foundations like the subject.

The board of review also submitted two pages of two decisions rendered in 1997 by the Property Tax Appeal Board from Christian County under Docket Numbers 95-4292-R-1 and 95-4858-R-1. In those decisions, the Property Tax Appeal Board found the subject dwellings to be real estate based on the weight and equity of the evidence.

The Vermilion County Supervisor of Assessments and Clerk of the Vermilion County Board of Review, Donald Crist, was called as a witness and provided testimony to support the subject dwelling's real property classification and assessment. Crist testified township assessors duties and responsibilities include the initial discovery, data collection, and assessing property within the township jurisdiction. Crist testified his responsibilities

include equalization of assessments, clerk to the board of review, organizes records, and provides statistical data and assistance to township assessors. He was very familiar with the procedures used by Danville Township Assessment Officials for assessing manufactured homes. He concluded the township followed these procedures, which includes a test regarding the permanence of the structure and foundation materials in accordance with HUD law as well as the owner's intent. He defined and gave an example of intent where there have been instances when an owner kept the tongue and wheels of a structure, which was harbored in a temporary fashion with temporary materials. This type of property would receive a mobile home classification and was taxed using the privilege tax as provided by statute. (35 ILCS 515/3).

Crist testified that in almost all cases, when there is permanence to the foundation materials and in conjunction with the HUD definition of a permanent foundation a property is assessed as real estate. Crist cited for the record referencing Guide to Foundation and Support Systems for Manufactured Homes, published by the Manufactured Housing Research Alliance, the definition of a permanent foundation, which provides on page 12 of the document:

The U.S. Department of Housing and Urban Development (HUD) defines permanent foundation systems in its *Manufactured Home Procedural and Enforcement Regulations* as follows (*Manufactured Home Procedural and Enforcement Regulations*, Section 3282.12, 1999):

"(ii) A site built permanent foundation is a system of supports, including piers, either partially or entirely below grade which is:

- (A) Capable of transferring all design loads imposed by or upon the structure into soil or bedrock without failure,
- (B) Placed at an adequate depth below grade to prevent frost damage, and
- (C) Constructed of concrete, metal, treated lumber or wood, or grouted masonry."

Crist testified he believes federal law, that being HUD, governs manufactured homes. Thus, Crist argued the property is in exact conformance with the HUD definition of a permanent foundation. Crist next provided testimony regarding the differences between a manufactured home when compared to a modular home. He explained manufactured homes are almost completely constructed offsite and trucked to their intended location(s). These properties could be harbored in a few different manners. Modular constructed homes consist of some or part of the structure built elsewhere, trailered to the intended location(s), and assembled onsite.

Crist further argued whether a property has a vehicle title or house title has no bearing whatsoever (in the manner it is assessed). The witness also argued any vehicle that travels Illinois roadways must have a vehicle title. The witness argued the bill of sale is the instrument that transfers ownership.

Finally, Crist indicated that in almost every Property Tax Appeal Board hearing the township assessor typically appears and testifies. Crist testified the township assessor was notified of the hearing in this case, but Crist was informed by the township assessor he would not appear because he feared retribution because the appellant, Roger Boen, has budgetary oversight regarding the Danville Township Assessor's Office. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under cross-examination, Crist testified he was not familiar with and is the first time he became aware that the Cokrell property located in Danville Township was classified and taxed as a mobile home. The witness was asked, keeping in mind the rules and regulations regarding mobile homes, what would make the subject dwelling subject to only the privilege tax. The witness responded by testifying the testimony offered by Boen and Bowers indicates there are components of the subject's foundation that extend to the frostline. He testified that every definition of a permanent foundation during his 15 years as an assessment official requires a foundation to extend to the frost line, which is approximately 30 inches in the subject's area. He testified the way the subject's foundation is affixed and attached to the earth is in a permanent manner. He explained the weight of the home is supported by the piers which are supported by the runners which are supported by the footings that are below grade to the frost line. Furthermore, Crist noted the home is also affixed to the earth with tie down straps holding the dwelling in place on the piers. Although Crist has never personally inspected the subject dwelling, he testified that he believes the subject dwelling has a permanent perimeter foundation to the frost line. He does not believe a home must be attached to the block perimeter formation to be in accordance with the HUD definition of a permanent foundation. Crist further testified he does not believe the subject dwelling is not attached, but is actually resting on the perimeter formation or "curtain wall."

Under questioning from the hearing officer, Crist testified that the subject has a partial pier foundation, noting the perimeter block wall formation. However, Crist testified he cannot be certain the dwelling rests on the perimeter formation because he has never inspected the subject dwelling, but relied on second-hand information provided by field technician, Larry Bott, who was not present at the hearing. Crist testified manufactured dwellings with pier foundations like the subject located in

mobile home parks are assessed as real estate as are other like properties located throughout the county. The county does have some dwellings that are classified as mobile homes and taxed under the privilege tax. Crist testified a vast majority of these dwellings are single-wide mobile homes located in mobile home parks or small gatherings of mobile homes with transient owners. These dwellings rest on modified pier foundations that are temporary in nature and construction. They do not have perimeter foundations. Crist testified assessment officials consider the temporary and permanent nature of foundation types in determining whether a particular residential property is classified as real estate or a mobile home. Crist testified mostly "single-wide" mobile homes are classified as mobile homes due to their foundation types. Crist also discussed Illinois Department of Revenue Guidelines regarding "permanency" in consideration of whether a dwelling is a mobile home. These guidelines were not submitted by the board of review. Crist also argued the "intent" of the owner of manufactured dwelling to be permanent must be ascertained. More specifically, whether the wheels and tongue were removed and was the dwelling set in a permanent manner or a temporary harboring.

The Property Tax Appeal Board ordered the board of review to submit property record cards and classifications of at least five dwellings with pier foundations similar or like the subject that were assessed as real estate. The board of review provided 48 purported examples with some of the pertinent information. The first 12 properties were located in a trailer park community. Three dwellings are described as mobile homes; eight dwellings are described as modular homes; and one dwelling is described as a HUD spec. manufactured dwelling. All the dwellings are reported to have crawl space basements. Foundation types for two properties were listed as masonry wall. None of these 12 dwellings were listed as having a pier foundation in the foundation type section of the property record cards. Properties 13 to 48 are scattered throughout Danville Township. Three properties are described as mobile homes and six properties are described as modular dwellings. The other properties were simply described as one-story single family dwellings. All the dwellings are reported to have crawl space basements. Again, foundation types for two properties were listed as masonry wall and none of these additional properties were listed as having pier foundations.

Crist was not familiar with Mobile Home Local Services Tax Act (35 ILCS 515/1) or the Appellate Court's holdings in Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d (2nd Dist. 1996) and Christian County Board of Review v. Property Tax Appeal Board, 368 Ill.App. 3d 792, 858 N.E.2d 909 (5th Dist 2006), regarding the definition of a temporary foundation with respect to the classification of mobile homes in the State of

Illinois as defined in the Mobile Home Local Services Tax Act. (35 ILCS 515/1). The witness referred to legal counsel with regard to the interpretation and application of these decisions. Counsel for the board of review referenced a legal brief he prepared and submitted for the first time at the hearing. Counsel acknowledged the brief did not address Christian County Board of Review v. Property Tax Appeal Board, 368 Ill.App. 3d 792, 858 N.E.2d 909 (5th Dist 2006), regarding the Appellate Court's holdings with respect to the definition of a permanent foundation and classification for taxation purposes.

The board of review's legal counsel contends Lee County is distinguishable from this instant case. In Lee County, the subject property involved a recreational campground with 6,154 lots; all the trailers were portable, with the wheels attached; and the county stipulated that the homes did not meet the definition of real property detailed in the Mobile Home Local Services Tax Act. In contrast with respect to this appeal, the subject is a residential single-family property situated on a single parcel; the wheels were removed from the home; and the county does not stipulate, but maintains the subject property constitutes real estate under the Mobile Home Local Services Tax Act.

Counsel further argued, at the foundational level, the Appellate Court in Lee County improperly used the definition of a permanent foundation contained in the Illinois Manufactured Housing and Mobile Home Safety Act. (430 ILCS 115/2(1)). Counsel argued the HUD definition of a permanent foundation should have been utilized. In fact, counsel argued section 115/2(g) of the Illinois Manufactured Housing and Mobile Home Safety Act incorporates and defers to HUD regulations, which provides:

"Codes" means the safety codes for manufactured housing and mobile homes promulgated by the Department. The Codes shall contain the standards and requirements for manufactured housing and mobile homes so that adequate performance for the intended use is made the test of acceptability. The Code of Standards shall permit the use of new and used technology, techniques, methods and materials, for both manufactured housing and mobile homes, consistent with recognized and accepted standards adopted by . . . the United States Department of Housing and Urban Development, hereinafter "HUD", applying to manufactured housing and mobile homes. (430 ILCS 115/2(g)).

Counsel contends the regulations implementing the Illinois Manufactured Housing and Mobile Home Safety Act through the Illinois Administrative Code provides that any single family units constructed in accordance with the Federal Manufactured

Home Construction and Safety Standard (42 U.S.C. 5401) are not considered "mobile structures." These units are identified by a red emblem at the tailgate end of each unit. (77 *Ill.Admin.Code* 880.10(d)). Thus, the board of review's counsel argued the definition of a "permanent foundation" under the Safety Act should not be applied to the property tax assessment process.

The board of review argued deference by Illinois is required by federal law, namely, the Manufactured Home Construction and Safety Standards Act, which provides in part:

Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of the State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction and safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard. Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this chapter . . . (42 U.S.C. 5403(d)).

Based on the evidence and testimony presented, the board of review requested confirmation of the subject's classification and assessment.

In the appellant's response brief as allowed by the Board, the appellant argued Crist had not inspected the subject dwelling, even though he testified the dwelling was resting, in part, on the concrete block perimeter foundation. Larry Bott, who inspected the property and determined it was placed on a permanent foundation, was not present at the hearing to provide testimony or be cross-examined. Research conducted after the hearing by the appellant revealed that Bott owns a modular home that is classified as a mobile home under the Mobile Home Local Services Tax Act. (35 ILCS 515/1). The appellant submitted Bott's property record card to support this contention. In the memoranda section there is a hand-written notation stating: "1998 Modular changed from Real Estate to M.H. Privilege by S/A in 2000." The property record card also described the property as a dwelling with a crawl space foundation. The building sketch section states: "House 1 was razed in 2003. House 2 was removed and put on M.H. Privilege in 2000." Attached to the property record card was a document dated July 11, 2001, with a name

listed as Bott, Larry L., which also referenced the aforementioned parcel owned by Larry Bott. This document lists "Reason for Value Change" as "building removed per Don." The assessed value was changed by the Supervisor of Assessments, DC. In the hand-written section, the document states "Put on M.H. Privilege for 2002 per Don Crist?." The residence/bldg assessment of this parcel was changed from \$23,488 to \$3,750 for 2001 Assessment-Taxes payable in 2002.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Property Tax Appeal Board further finds a reduction in the subject assessment is warranted. The Board finds the Vermilion County Board of Review erred in classifying and assessing the subject dwelling home as real estate.

The appellant argued that the subject dwelling is a mobile home and was improperly classified and assessed as real estate. Section 1-130 of the Property Tax Code defines real property in part as:

The land itself, with all things contained therein, and also buildings, structures and improvements, and other permanent fixtures thereon, . . . and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code. **Included therein is any vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, if the structure is resting in whole on a permanent foundation** (emphasis added). . . . (35 ILCS 200/1-130).

Additionally, section 1 of the Mobile Home Local Services Tax Act defines a mobile home as:

a factory assembled structure designed for permanent habitation and so constructed as to permit its transport on wheels, temporarily or permanently attached to its frame, from the place of its construction to the location, or subsequent locations, and placement on a temporary foundation, at which it is intended to be a permanent habitation, and situated so as to permit the occupancy thereof as a dwelling place for one or more persons, provided that any such structure resting in whole on a permanent foundation, with wheels, tongue and hitch removed at the time of registration provided for in Section 4 of this Act, shall not be construed as a 'mobile home', but shall be

assessed and taxed as real property as defined by Section 1-130 of the Property Tax Code. (35 ILCS 515/1).

The Property Tax Appeal board finds both the Property Tax Code and the Mobile Home Local Services Tax Act require that a factory assembled structure, vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, and constructed as to permit its transport on wheels, temporarily or permanently attached to its frame, at which it is intended to be a permanent habitation, to be resting in whole on a permanent foundation before it can be classified and assessed as real estate. Absent a permanent foundation a mobile home is subject to the privilege tax provided by the Mobile Home Local Services Tax Act. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711, 719 (2nd Dist. 1996); Berry v. Costello, 62 Ill.2d 342, 347 (1976). The Property Tax Code and the Mobile Home Local Services Tax Act identify the determining factor in classifying a mobile home as real estate as being the physical nature of the structure's foundation. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 724.

Neither the Property Tax Code nor the Mobile Home Local Services Tax Act defines "permanent foundation." However, the Board may look to other statutes that relate to the same subject matter to determine what constitutes a permanent foundation for assessment purposes. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 720. The Property Tax Appeal Board's interpretation and definition of a permanent foundation was upheld by the appellant court. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711 (2nd Dist. 1996). Furthermore, the Property Tax Appeal Board's definition and use of a permanent foundation was affirmed. Christian County Board of Review v. Property Tax Appeal Board, 368 Ill.App. 3d 792, 858 N.E.2d 909 (5th Dist 2006)

The Illinois Manufactured Housing and Mobile Home Safety Act contains a definition for a "permanent foundation." Section 2(1) of the Illinois Manufactured Housing and Mobile Home Safety Act defines a "permanent foundation" as:

a closed perimeter formation consisting of materials such as concrete, mortared concrete block, or mortared brick extending into the ground below the frost line which shall include, but not necessarily be limited to cellars, basements, or crawl spaces, **but does exclude the use of piers.** (430 ILCS 115/2(1)).

The Illinois Manufactured Home Tiedown Code (77 Ill.Admin.Code 870) also contains a definition of "permanent foundation".

Section 870.20 of the Illinois Manufactured Home Tiedown Code states in part that:

In addition to the definitions contained in the Illinois Mobile Home Tiedown Act [210 ILCS 120] the following definitions apply:

Permanent Foundation. A continuous perimeter formation intended to support and anchor the unit to withstand the specified design loads. It shall consist of materials such as concrete, mortared concrete blocks or mortared brick, steel, or treated lumber extending into the ground below the frost depth which shall include basements or crawl spaces. (77 Ill.Admin.Code 870.20).

The Manufactured Home Community Code addresses the issue of immobilization of a mobile home, which appears to be analogous to having a permanent foundation. A manufactured home is considered immobilized when a home is connected to public utilities (77 Ill.Admin.Code 860.150(a)) and:

The wheels, tongue, and hitch shall be removed and the home shall be supported by a continuous perimeter foundation of material such as concrete, mortared concrete blocks or mortared brick which extends below the established frost depth. The home shall be secured to the continuous perimeter foundation with ½ inch foundation bolts spaced every 6 feet and within one foot of the corners. The bolts shall be imbedded at least 7 inches into concrete foundations or 15 inches into block foundations. (77 Ill.Admin.Code 860.150(b)).

Each of these provisions require that a permanent foundation must be a continuous perimeter formation composed of concrete, mortared concrete block, mortared brick and the like that extends below the frost line that actually supports and anchors the mobile home.

The Board finds the facts under this appeal clearly show the subject dwelling at issue is not resting in whole on a permanent foundation so as to be classified and assessed as real estate under the provisions of the Property Tax Code. The Board finds the subject dwelling is not resting on, supported by, or anchored to a continuous perimeter foundation. The evidence disclosed the dwelling has a mortared concrete block perimeter formation or "curtain wall" for aesthetics and to protect the undercarriage from the elements. The appellant's witness testified the footings are placed below grade, but there is no evidence in this record if the footings extend below the frost line. As a matter of fact, there is no credible documentary evidence in this

record, absent the unsupported testimony of Crist, as to the depth of the frost line, which is an ancillary factor to this appeal as is the removal of the wheels and tongue. The Board further finds the testimony offered by Crist regarding the subject dwelling to be unpersuasive and not credible. Although he provided lengthy testimony regarding the subject's foundation type, the Board finds Crist did not inspect the subject's foundation in order to make the proper determination of its permanent or temporary nature in accordance with Illinois law. This fact diminishes the weight of Crist's testimony. Larry Bott, who purportedly inspected the subject property, was not present at the hearing to provide direct testimony or be cross-examined.

The Board further finds it to be highly suspect and problematic that Mr. Bott, who owns a modular home, has his dwelling classified as a mobile home and taxed under the privilege tax. As Crist's testimony indicated, some or part of a modular structure is built off site, trailered to the intended location(s), and assembled onsite. The Board finds a "modular home" as described by Crist cannot be classified as a mobile home under Illinois law. Section 1 of the Mobile Home Local Services Tax Act. (35 ILCS 515/1) defines a mobile home as "a factory assembled structure designed for permanent habitation and so constructed as to permit its transport on wheels. . ." The Property Tax Appeal Board finds a modular home may be partially factory built, however, a modular home is trailered to its site, not transported on its own wheels like a mobile home. Furthermore, a modular home is assembled on site, unlike mobile homes which are clearly factory assembled structures.

The Property Tax Appeal Board finds the evidence and testimony in this appeal clearly provide that the subject's perimeter concrete wall or "curtain wall" does not anchor or support the mobile home. The credible testimony photographic evidence clearly shows there is space between the top of the perimeter formation and the bottom of the home. The evidence further disclosed that the dwelling is resting on stacked, non-mortared concrete blocks atop concrete runners that are supported by footings below grade. These stacked concrete blocks are not attached to the dwelling or the runners. There are wooden shims placed between the top of the concrete blocks and the dwelling's steel frame for leveling purposes. The home is held in place by its own weight and anchored to the ground with straps.

The board of review contends the subject's classification and corresponding assessed valuation is consistent with county policy for assessing manufactured dwellings. The testimony revealed Vermilion County has a policy to assess all manufactured homes as real estate regardless if they are resting, at least in part, on a perimeter block foundation. The Property Tax Appeal Board

finds that this policy is loosely applied at best, as demonstrated by the Bott and Cockrell properties, and is not in accordance with section 1-130 of the Property Tax Code (35 ILCS 200/1-130) or applicable case law, which requires that a dwelling must be resting in whole on a permanent foundation to be classified and assessed as real estate.

The Property Tax Appeal Board further finds the county's practice of classifying some manufactured homes under the Mobile Home Local Services Tax Act (35 ILCS 515/1) while assessing other with similar or identical temporary foundations not based on the type of foundation appears to be inequitable and in violation of the principle of uniformity. General policies which create a substantial disparity between similar properties or classes of taxpayers violate the principles of uniformity. Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309, 314 (1973). The testimony presented indicates that similar manufactured and even modular homes would be classified and taxed differently dependent on the permanency and intent of the home owner and the county's use of the definition of a permanent foundation as described by HUD. The policy would classify a mobile home as real property, regardless of type of foundation. This practice results in mobile homes with temporary foundations being classified and taxed differently. This disparate treatment is not allowed under the uniformity provisions provided by the Illinois Constitution of 1970. For these reasons, the Property Tax Appeal Board finds Vermilion County's assessment practices as well as the assessment policy and methodology used by Danville Township assessment officials regarding the classification and assessment of mobile homes creates an assessment inequity under the uniformity provisions provided by Article IX, section 4(a), of the Illinois Constitution of 1970.

The Board further finds the definition and characteristics of a permanent foundation detailed within documents submitted by the board of review, namely the United States Department of Housing and Urban Development (HUD) do not conform, supersede or override applicable state statute and case law for the classification and taxation of mobile homes located in Illinois. Furthermore, the Guide to Foundation and Support Systems for Manufactured Homes, as cited by the board of review provides on page 11:

Nothing in this guide is intended to suggest that a home on any particular foundation system is or is not real property rather than personal property. In all cases, real or personal property status is determined by state or local laws that may or may not reference foundation type. Similarly, eligibility for conventional long-term financing is determined by underwriting standards that may or may not reference

the foundation type or real versus personal property status.

The board of review also argued the "intent" of the owner to permanently harbor a manufactured dwelling is a controlling factor whether a particular manufactured should be classified and assessed as real property. The Property Tax Appeal Board finds this argument has no bearing or merit with respect to the proper classification and assessment of mobile homes. The Board finds that although the subject dwelling may be used as a permanent residence, there is no case law or statutory authority that suggests it shall be assessed as real property on that basis. As a result of this analysis, the Property Tax Appeal Board finds the board of review's policy of classifying mobile homes as real estate was not based on the type of foundation and appears to be unlawful in the sense that it was not in accordance with the relevant provisions of the Property Tax Code or the Mobile Home Local Services Tax Act.

In conclusion the Property Tax Appeal Board finds the dwelling located on the subject property is not resting in whole on a permanent foundation and should not be classified and assessed as real property. Therefore, the Board finds that the assessment of the subject property is incorrect and a reduction in the assessment is appropriate.

This is a final administrative decision of the Property Tax Appeal Board are subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



Chairman



Member



Member



Member



Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: September 28, 2007



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.